IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.Rev.Pet.No. 2907 of 2007()

CRA.890/2005 of ADDL.SESSIONS COURT (ADHOC)III, TRIVANDRUM
ST.57/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

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REVN. PETITIONER: APPELLANT/ACCUSED:

V.TRIPURESWARI AMMA, T.C.IV/2171,
EAST PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.S.B.JAYACHANDRAN
SRI.P.M.JOSEPH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ADDITIONAL PUBLIC PROSECUTOR (G.P.).

2. P.CHANDRA MOHANAN NAIR, (C.M.NAIR),
VADEKKEVALLA VEEDU, EAST PATTOM, NOW RESIDING AT
AMBA BHAVAN, THERIKKAL MUKKOLA P.O.,
THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2907 OF 2007 C

Dated this the 20th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.57/02 on the file of the J.F.C.M.-II, Thiruvananthapuram challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner raised the following contentions:-

Eventhough the revision petitioner had changed her address from the address shown in the complaint as well as in the statutory notice, the statutory notice was sent to the former address and that is why it was returned unserved. The revision petitioner was not given an opportunity to cross-examine the complainant with regard to the proof affidavit filed by him. The dishonour of the cheque is not on the ground of insufficiency of funds but on the ground that the accused is having LPD account in the Bank. Hence, it does not amount to dishonour within the meaning of section 138 of the Negotiable Instruments Act.

5. I am afraid that I cannot agree with the above submissions. A perusal of the lower court records shows that Ext.P6 statutory notice by the complainant's counsel was sent to the very same address which is shown by the revision petitioner in the memorandum of revision filed before this court. It is the very same address which is shown in the complaint. When the notice under registered post with acknowledgment due has been sent in the correct address the complainant is entitled to the benefit under section 27 of the General Clauses Act.

6. A perusal of the lower court records shows that the complainant examined as PW1 was cross-examined at length on behalf of the revision petitioner and hence the contention that the revision

petitioner was deprived of an opportunity to cross-examine the complainant is unsustainable.

7. It is true that the reason stated in Ext.P2 memo for dishonour of the cheque is that the party is having LPD account in the Bank. But Ext.P1 cheque shows that this is a cheque leaf issued against account No.4052. Ext.P7 is the certified ledger extract by the drawee bank, namely, the Muttada branch of the Canara Bank. It shows that there was no sufficient bank balance in account No.4052. At no point of time did the account have a cash balance exceeding Rs.1,001/- whereas the Ext.P1 cheque is for a sum of Rs.85,000/-. Ext.P1 cheque was, therefore, dishonoured for want of sufficient funds within the meaning of section 138 of the Negotiable Instruments Act as is discernible from the ledger extract. The courts below have concurrently found against the defence set up by the revision petitioner. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

8. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision

Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.85,000/- (Rupees eighty five thousand only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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